

U.S. Department  
of Transportation  
Federal Highway  
Administration

Wyoming Division  
1916 Evans Avenue  
Cheyenne, WY 82001-3764

March 24, 2000

File:433

James Paugh, Realty Officer  
Bureau of Land Management  
P.O. Box 1828  
5353 Yellowstone Road  
Cheyenne, WY 82003

Subject: Federal Land Transfers, Application Letters

Dear Mr. Paugh:

In the December 21, 1999 edition of the Federal Register, the Federal Highway Administration (FHWA) published a Right-of-Way Rulemaking. In an effort to streamline, FHWA allowed the State Departments of Transportation to apply directly to a land managing agency for Federal Land Transfers with FHWA concurrence. The attached page 71296 explains this new procedure. In a conversation with Tamara Gertsch of your office on March 22, 2000, we expressed our desire to try this new process with your agency. The process would stay the same as it currently is in regard to cultural resources and federal land transfers with the exception that WYDOT would address and send directly to your field offices applications for Letters of Consent after they obtain a concurrence from the FHWA. The Letter of Consent would then be sent from the BLM field offices directly to WYDOT. Please notify your field offices of this new procedure.

If you have any questions, please call Rod Vaughn at 307-772-2004, ext. 48.

Sincerely yours,  
/s/ Rod Vaughn  
Rodney D. Vaughn, P.E.  
Environmental/ROW Engineer

Enclosure

cc: Tamara Gertsch, Realty Specialist, BLM, w/enclosure  
Tony Warburton, Right-of-Way, WYDOT  
Jim O'Connor, Lands Management Administrator  
John Childers, WYDOT  
Jim Haefele, WYDOT

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requirements of the Uniform Act apply as if the agency had acquired the property itself.

(6) When, subsequent to Federal approval of property acquisition, a qualified conservation organization acquires real property for a project receiving Federal-aid highway funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(a)(2) apply.

(c) Property management. Real property acquired with TEA funds shall be managed in accordance with the property management requirements provided in subpart D of this part. Any use of the property for purposes other than that for which the TEA funds were provided must be consistent with the continuation of the original use. When the original use of the real property is converted by sale or lease to another use inconsistent with the original use, the STD shall assure that the fair market value or rent is charged and the proceeds reapplied to projects eligible under title 23 of the United States Code.

#### Sec. 710.513 Environmental mitigation.

(a) The acquisition and maintenance of land for wetlands mitigation, wetlands banking, natural habitat, or other appropriate environmental mitigation is an eligible cost under the Federal-aid program. FHWA participation in wetland mitigation sites and other mitigation banks is governed by 23 CFR part 777.

(b) Environmental acquisitions or displacements by both public agencies and private parties are covered by the Uniform Act when they are the result of a program or project undertaken by a Federal agency or one that receives Federal financial assistance. This includes real property acquired for a wetland bank, or other environmentally related purpose, if it is to be used to mitigate impacts created by a Federal-aid highway project.

#### Subpart F--Federal Assistance Programs

#### Sec. 710.601 Federal land transfer.

(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, 104 Stat. 1808, as amended).

(b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.

(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

- (1) The purpose for which the lands are to be used;
- (2) The estate or interest in the land required for the project;
- (3) The Federal-aid project number or other appropriate references;
- (4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The

land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the four-month reply period at the timely request of the land-owning agency for good cause.

(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.

(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.

(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.

#### Sec. 710.603 Direct Federal acquisition.

(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.

(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal acquisition shall include:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of part 771 of this chapter;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations which have been conducted by the STD with landowners;

(9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and